

# DESIGN ACT

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Act No. 951, Promulgated on December 31, 1961  
As last amended by Act No. 6767, December 11, 2002

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## **CHAPTER I**

### **GENERAL PROVISIONS**

#### **Article 1 Purpose**

The purpose of this Act is to encourage the creation of designs by ensuring their protection and utilization so as to contribute to the development of industry.

#### **Article 2 Definitions**

The definitions of the terms used in this Act are as follows:

- (i) "design" means the shape, pattern, color or a combination of these in an article that produces an aesthetic impression in the sense of sight; the same applies to a part of an article unless Article 12 applies;
- (ii) "registered design" means a design for which design registration has been granted;
- (iii) "design registration" means registration of examined or unexamined designs;
- (iv) "examined design registration" means registration of a design that is subject to examination as to whether it is completely qualified for registration;
- (v) "unexamined design registration" means registration of a design that is subject to examination as to whether the application for design registration satisfies the requirements for registration under this Act, with the exception of the requirements that are not applied under Article 26(2).
- (vi) "working" of a design means any act of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (as

well as displaying for assignment or lease) the article to which the design has been applied.

### **Article 3 Persons Entitled to Obtain Design Registration**

(1) A person who creates a design or the person's successor is entitled to obtain design registration under this Act; however, employees of the Korean Intellectual Property Office and the Intellectual Property Tribunal may not obtain design registration during their employment except in the case of inheritance or a bequest.

(2) If two or more persons jointly create a design, the right to obtain design registration is jointly owned.

### **Article 4 *Mutatis Mutandis* Application of the Patent Act**

Articles 3 to 26 and 28 to 28<sup>quinqüies</sup> of the Patent Act apply *mutatis mutandis* to designs. In such cases, "Article 132<sup>ter</sup>" in Article 6, 11(1)(iv), 15(1) and 17 of the same Act reads "Article 67<sup>bis</sup> or 67<sup>ter</sup>".

## **CHAPTER II**

### **REQUIREMENTS FOR DESIGN REGISTRATION AND DESIGN APPLICATIONS**

#### **Article 5 Requirements for Design Registration**

(1) Designs that are industrially applicable may be registered unless they fall under any of the following subparagraphs:

- (i) the design was publicly known or publicly worked in the Republic

of Korea or in a foreign country before the filing of the design application;

(ii) the design was described in a publication distributed in the Republic of Korea or in a foreign country before the filing of the design application; or

(iii) the design is similar to a design referred to in subparagraph (i) or (ii).

(2) Notwithstanding paragraph (1), where a person with ordinary skill in the art to which a design pertains could easily have created the design on the basis of a shape, pattern, color or a combination of these widely known in the Republic of Korea (other than a design referred to in any subparagraph of paragraph (1)) before the filing of the design application, design registration may not be granted for the design.

(3) Notwithstanding paragraph (1), design registration may not be granted where a design for which a registration application has been filed is identical or similar to a part of a design indicated in a description, represented in a drawing, photograph or sample attached to another application for design registration filed before and laid open or published after the filing date of the design application.

## **Article 6 Unregistrable Designs**

Notwithstanding Article 5, the following designs are unregistrable:

(i) designs that are identical or similar to the national flag, national emblem, military flags, decorations, orders of merit, badges and medals of public organizations, national flags and national emblems of foreign countries, or characters or indications of international organizations;

(ii) designs liable to contravene public order or morality;

(iii) designs liable to give rise to confusion over articles connected with another person's business; and

- (iv) designs consisting solely of a shape that is essential to secure the functions of the article.

### **Article 7 Similar Designs**

(1) The owner of a design right or an applicant for design registration is entitled to obtain design registration for a design that is similar only to the owner's registered design (referred to as "the principal design") or a design for which a registration application has been filed as a similar design (referred to as "a similar design").

(2) Paragraph (1) does not apply to a design that is similar only to a similar design that is registered or for which registration has been applied for under paragraph (1).

### **Article 8 Exception to Loss of Novelty**

(1) Where a design owned by a person entitled to design registration falls under any subparagraph of Article 5(1), Article 5(1)(i) or (ii) does not apply to the design or a similar design application filed by the design owner within six months of the date prescribed in the applicable subparagraph under Article 5(1).

(2) When applying for design registration, a person intending to take advantage of paragraph (1) shall submit an application for design registration specifying the purport of such intention to the Commissioner of the Korean Intellectual Property Office, and submit documents proving the relevant facts within thirty days of the date of application for design registration; however, this does not apply where the designs concerned fall under each subparagraph of Article 5(1) against the person's will.

### **Article 9 Applications for Registration**

(1) A person seeking to register a design shall file a request for an application

for examined design registration or a request for an application for unexamined design registration with the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the applicant (and, if a legal entity, the name and address of the business);
- (ii) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (iii) deleted;
- (iv) the article that is the object of the design;
- (ivbis) whether the application is an application for independent design registration or similar design registration;
- (v) the registration or application number of the principal design (only where the applicant seeks design registration as a similar design under Article 7(1));
- (vi) the name and address of the creator of the design; and
- (vii) matters prescribed in Article 23(3) (only when claiming a priority right).

(2) An application for examined design registration or an application for unexamined design registration under paragraph (1) must be accompanied by a drawing or drawings in which the following matters are indicated for each design:

- (i) the article that is the object of the design;
- (ii) an explanation of the design and the essentials of the creation; and
- (iii) serial numbers of the design (only if the application is for multiple design registration under Article 11bis).

(3) An applicant for design registration may submit a photograph or a sample of the design instead of the drawing(s) referred to in paragraph (2).

(4) A person applying for unexamined design registration shall indicate in a request for an application for unexamined design registration whether the application is an application for multiple design registration under Article 11*bis*, the number of designs and the matters referred to in the subparagraphs of paragraph (1).

(5) A person applying for multiple design registration under Article 11*bis* shall indicate in an application for unexamined design registration the particulars prescribed under paragraph (1)(i) and (ii) and in the following subparagraphs:

(i) the serial numbers of the designs; and

(ii) the particulars prescribed under subparagraphs (iv) to (vii) of paragraph (1).

(6) Designs that qualify for unexamined design registration are limited to the goods designated by ordinance of the Ministry of Commerce, Industry and Energy among the goods classified by Article 11*bis*. For the designated goods, an application may be made only for unexamined design registration.

(7) Matters other than those as prescribed in paragraphs (1) to (6), which are necessary for the application for design registration, are determined by ordinance of the Ministry of Commerce, Industry and Energy.

## **Article 10 Joint Application**

Where the right to obtain design registration is jointly owned under Article 3(2), the owners shall jointly file an application for design registration.

### **Article 11 A Single Application for a Single Design**

- (1) An application for examined design registration must relate to a single design only.
- (2) A person applying for design registration may do so only for the classes of articles prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 11bis Application for Multiple Design Registration**

- (1) An application for unexamined design registration may be made for twenty designs or less (referred to as "an application for multiple design registration"). In such cases, each design must be represented separately.
- (2) The scope of designs that qualify for an application for multiple design registration is limited to designs applied to goods under the same classification as the classification of goods prescribed by ordinance of the Ministry of Commerce, Industry and Energy.
- (3) A person applying for multiple design registration may file, with the principal design, an application for a similar design registration that falls within the category of a principal design.
- (4) Notwithstanding paragraph (3), where a person files an application for multiple design registration of designs similar to the person's registered design or a design for which the person has applied for design registration, the person may file an application for multiple design registration only for similar designs belonging to one principal design.

### **Article 12 Design of a Set of Articles**

- (1) Where two or more articles are used together as a set of articles, the design of the set may be registered if the set constitutes a coordinated whole.
- (2) The set of articles referred to in paragraph (1) is governed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) Deleted.

### **Article 13 Secret Designs**

(1) An applicant for design registration may request that the design be kept secret for a period designated in the request not exceeding three years after the date on which the establishment of the design right was registered. When applying for multiple design registration, a request must be made for each design for which design registration is sought.

(2) When applying for design registration, a person making a request under paragraph (1) shall state the designated period in the request and submit it to the Commissioner of the Korean Intellectual Property Office.

(3) An applicant for design registration or the owner of a design right may reduce or extend the period designated under paragraph (1) by a request. The period may not be extended by more than three years after the registration date of the establishment of the design right.

(4) In any of the following cases, the Commissioner of the Korean Intellectual Property Office shall allow persons to have access to a confidential design under paragraph (1):

- (i) where the request is made by a person who has obtained the consent of the owner of the design right;
- (ii) where the request is made by a party or an intervener in examination, opposition to registration of an unexamined design, trial, retrial or litigation proceedings related to a design identical or similar to the design kept secret;
- (iii) where the request is made by a person who clearly claims to have been warned of infringing the registered design; or
- (iv) where the request is made by a court or the Intellectual Property Tribunal.

(5) When requesting the laying open of an application under Article 23(2), the request referred to paragraph (1) is deemed to have been withdrawn.

#### **Article 14 Application for Design Registration Filed by an Unentitled Person and Protection of the Lawful Holder of a Right**

If design registration is granted on the grounds that an application has been filed by a person who has not succeeded to the right to obtain design registration or who has laid a false claim to the right (referred to as "the unentitled person"), a subsequent application filed by the lawful holder of the right is deemed to have been filed on the date of the application previously filed by the unentitled person. However, this provision does not apply where the subsequent application is filed by the lawful holder of the right more than thirty days after the application by the unentitled person was rejected.

#### **Article 15 Design Registration Granted to an Unentitled Person and Protection of the Lawful Holder of a Right**

If design registration is revoked or invalidated by a trial decision for the lack of entitlement to obtain design registration under Article 3(1), a subsequent application for design registration filed by the lawful holder of the right is deemed to have been filed on the date of filing the application that led to the grant of the design registration that was revoked or invalidated; however, this provision does not apply if the subsequent application is filed more than thirty days after the decision to revoke or to invalidate it became final.

#### **Article 16 First-to-File Rule**

(1) Where two or more applications for design registration related to the same or a similar design are filed on different dates, only the applicant with the earlier filing date may obtain design registration for the design.

(2) Where two or more applications for design registration related to the same or a similar design are filed on the same date, only the person agreed upon by all applicants after consultation may obtain design registration for the design.

If no agreement is reached or no consultation is possible, none of the applicants may obtain design registration.

(3) Where an application for design registration is withdrawn or invalidated, the application, for the purposes of paragraphs (1) and (2), is deemed to have never been filed.

(4) Where a person who is not the creator of a design or the successor in title to the right to obtain design registration files an application for design registration, the application is deemed never to have been filed, for the purposes of paragraphs (1) and (2).

(5) In the case referred to in paragraph (2), the Commissioner of the Korean Intellectual Property Office shall instruct the applicants to give notice of the results of the consultation within a designated period. If the notice is not submitted within the designated period, the applicants are deemed not to have reached an agreement within the meaning of paragraph (2).

### **Article 17    Amendment of Procedure**

The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may order the correction of a design-related procedure within a designated period:

- (i) where the requirements of Article 3(1) or (6) of the Patent Act as applied under Article 4 of this Act have not been complied with;
- (ii) where the procedure does not comply with the formalities prescribed in this Act or by Presidential Decree; or
- (iii) where the fees required under Article 34 have not been paid.

### **Article 18    Amendment to Application and Change of Gist**

(1) An applicant for design registration may amend the particulars of a request, a description or a drawing attached to the request for an application

if the gist of the request, the description and the drawing attached to the original application has not been changed before transmittal of the examiner's first decision to either grant design registration under Article 28 or refuse design registration under Article 26 (referred to as "a decision to grant or refuse design registration"). However, if a request for a trial against the examiner's decision to refuse design registration is filed, the applicant may amend the description or the drawing within thirty days of the filing date of the request.

(2) Where an amendment under paragraph(1) is recognized as a change of gist of a request, a description or a drawing originally attached to the request for an application after the date on which the establishment of the design right was registered, the application for registration of the design is deemed to have been filed on the filing date of the amendment.

### **Article 18*bis* Rejection of Amendment**

(1) Where an amendment to a description or drawing attached to an application under Article 18 changes the gist of the application, the examiner shall reject the amendment by decision.

(2) Where a decision to reject an amendment under paragraph(1) has been made, the examiner's decision to grant or refuse design registration for the concerned application may not be given until more than thirty days after the date on which the certified copy of the decision was transmitted.

(3) Where an applicant has requested a trial under Article 67*bis* against a decision to reject an amendment under paragraph(1), the examiner shall suspend examination of the application for design registration until the trial decision has become final.

(4) The decision to reject an amendment under paragraph(1) must be in writing and must state the reasons for the decision.

### **Article 19 Division of Applications for the Registration of Designs**

(1) A person falling under any of the following subparagraphs may divide a

part of an application for design registration into one or more new applications:

- (i) a person who has applied for registration of two or more designs in contravention of Article 11;
- (ii) a person who has applied for multiple design registration; or
- (iii) deleted.

(2) Except under Articles 8(2) or 23(3) and (4), divisional applications are deemed to have been filed at the time of filing the original application.

(3) The division of an application for design registration under paragraph (1) may be made within the period for amendment under Article 18(1).

(4) Deleted.

## **Article 20 Conversion of an Application**

(1) An applicant may convert an application for a similar design registration into an application for an independent design registration. In such a case, the application for an independent design registration is deemed to have been filed at the time of filing the application for a similar design registration. However, this provision does not apply to Article 8(2) or Article 23(3) and (4).

(2) An applicant may convert an application for an independent design registration into an application for a similar design registration. In such a case, the application for a similar design registration is deemed to have been filed at the time of filing the application for an independent design registration. However, this provision does not apply to Article 8(2) or Article 23(3) and (4).

(3) The conversion of an application under paragraphs (1) and (2) may not be made after an examiner's decision to grant or refuse design registration or a trial decision on the earlier application for the design or a similar design registration becomes final.

(4) Deleted.

**Article 20bis Conversion of an Application for Unexamined Design Registration etc.**

(1) Where a person applies for unexamined design registration for articles subject to an examined design registration or vice versa, in contravention of Article 9(6), the person may convert the application for design registration into an application for examined design registration or unexamined design registration.

(2) An application for design registration converted in accordance with paragraph(1) is deemed to have been made when an earlier application for design registration is made. However, this does not apply to Article 8(2) or Article 23(3) and (4).

(3) A conversion of an application under paragraph(1) may not be made after a decision to grant or refuse design registration or a trial decision on the earlier application for design registration has been made.

(4) Deleted.

**Article 21 Deleted**

**Article 22 Deleted**

**Article 23 Priority Claim under a Treaty**

(1) Where a national of a member country of a treaty that recognizes the right of priority for an application filed by a national of the Republic of Korea claims a right of priority for an application for design registration in the Republic of Korea based on an earlier application for the same design filed in the national's country or in one of the treaty countries, the filing date of the earlier application in the foreign country is deemed to be the filing date in the

Republic of Korea under Articles 5 and 16. Where a national of the Republic of Korea has applied for design registration in a country that recognizes, under a treaty, the right of priority for an application for design registration filed by nationals of the Republic of Korea and claims the right of priority for the application for design registration in the Republic of Korea based on an earlier application for the same design in a treaty country, this provision also applies.

(2) A person claiming a right of priority shall file an application for design registration within six months of the filing date of the earlier application that serves as the basis for claiming the right of priority.

(3) When applying for design registration, a person claiming a right of priority under paragraph (1) shall specify the claim, the name of the country in which the earlier application was filed and the filing date of the application.

(4) A person who has claimed a right of priority under paragraph (3) shall submit a written statement setting forth the filing date of the application, certified by the government of the country where the earlier application was filed, and a certified copy of the drawing of the design, to the Commissioner of the Korean Intellectual Property Office within three months of the filing date of the application for design registration.

(5) Where a person who has claimed a right of priority under paragraph (3) fails to submit the document prescribed in paragraph (4) within the required period, the claim to the right of priority loses its effect.

### **Article 23bis Laying Open an Application**

(1) Applicants for an examined design registration may request the laying open of their application by ordinance of the Ministry of Commerce, Industry and Energy.

(2) Where the laying open of an application is requested under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall lay open the design application in the Design Gazette in accordance with Article 78. However, the Commissioner of the Korean Intellectual Property Office may

not lay open the application under either of the following circumstances:

- (i) the design is liable to contravene public order or morality; or
- (ii) the design must be kept secret under Article 41 of the Patent Act applied *mutatis mutandis* under Article 24 of this Act.

(3) When initial certified copies of a decision to grant or refuse design registration on an application for design registration have been transmitted, a person may not request the laying open of an application prescribed in paragraph (1).

(4) Deleted.

### **Article 23<sup>ter</sup> Effect of Laying Open an Application**

(1) After an application is laid open, the applicant may give a written warning indicating that an application for design registration has been filed to any person who has commercially or industrially worked the filed design or a design similar to the filed design.

(2) An applicant may demand a person who has been warned under paragraph (1) or who has worked a filed design or a design similar to a filed design knowing that the design has been laid open to pay compensation equivalent to the amount the applicant would normally receive for working the registered design or a design similar to the registered design from the date of warning or the date on which the person became aware that the design application had been filed to the date of registration of the filed design.

(3) The right to demand compensation under paragraph (2) may be exercised only after registration of the filed application.

(4) Exercising the right to demand compensation under paragraph (2) does not preclude exercising the design right.

(5) Articles 63 and 67 of this Act and Articles 760 and 766 of the Civil Act apply *mutatis mutandis* to the exercise of the right to demand compensation

under paragraph (2). In such a case, "the time when the damaged party or his legal representative became aware of such damage and of the identity of the person causing it" in Article 766 of the Civil Act reads "the date of registration of the design right".

(6) Where an application for design registration is abandoned, invalidated or withdrawn after the laying open of the application, a decision to refuse design registration, a decision to revoke design registration under Article 29*quinquies*(3) or a trial decision to invalidate a design registration under Article 68 (unless Article 68(1)(iv) applies) has become final, the right under paragraph (2) is deemed to have never existed.

### **Article 23*quater*   Transfer etc. of the Right to Obtain Design Registration**

(1) The right to obtain registration of a design may be transferable. However, the right to obtain a principal design and the right to obtain a similar design must be transferred together.

(2) The right to obtain registration of a design may not be pledged.

(3) Where the right to obtain registration of a design is jointly owned, the owners may not assign their individual share without the consent of the other owners.

### **Article 23*quinquies*   Furnishing of Information**

Any person may furnish the Commissioner of the Korean Intellectual Property Office with information about a design for which an application for design registration has been filed with evidence that the concerned design is unregistrable under any subparagraph of Article 26(1).

### **Article 24   *Mutatis Mutandis* Application of the Patent Act**

Articles 38 to 41 of the Patent Act apply *mutatis mutandis* to the registrability of designs and to applications for design registration.

## **CHAPTER III**

### **EXAMINATION**

#### **Article 25 Examination by an Examiner**

- (1) The Commissioner of the Korean Intellectual Property Office shall have applications for design registration and oppositions to an unexamined design registration examined by an examiner.
- (2) The qualifications of examiners are prescribed by Presidential Decree.

#### **Article 26 Decision to Refuse Design Registration**

- (1) An examiner shall decide to refuse design registration under any of the following reasons (referred to as "the reasons for refusal"):
  - (i) where the design in the application for design registration is unregistrable under Articles 5 to 7, 9(6), 10 to 12, 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
  - (ii) deleted;
  - (iii) where a person is not entitled to design registration under Article 3(1), or where the design in the application for design registration is unregistrable under the proviso of Article 3(1);
  - (iv) where an application for design registration violates a treaty; or
  - (v) where an application for a similar unexamined design registration falls under any of the following subparagraphs:
    - (a) where a design registered as a similar design or a design for which an application for similar design registration has been filed is indicated as the principal design;

- (b) where the term of the design right of a principal design has expired; or
- (c) where an application for a principle unexamined design registration has been invalidated, withdrawn or abandoned, or where a decision to refuse design registration becomes final;
- (d) where an applicant for similar unexamined design registration is not identical to the owner of a design right related to a principle design or an applicant for principle design registration; or
- (e) where the design of a filed application for similar unexamined design registration is dissimilar to the principle design.

(2) Notwithstanding paragraph (1), Articles 5, 7, 11(1) and 16(1) and (2) do not apply to an application for unexamined design registration (unless the design is industrially applicable under provisions other than those prescribed in the subparagraphs of Article 5(1)).

### **Article 27 Notification of Reasons for Refusal**

(1) An examiner who intends to refuse design registration under Article 26 shall notify the applicant of the reason for refusal (referring to any of the reasons for refusal in the subparagraphs of Article 26(1)) and give the applicant an opportunity to submit a written opinion within a designated period.

(2) Where reasons exist to refuse some of the designs in an application for multiple design registration, the serial number of the designs concerned, the article that is the object of the design and the reasons for refusal must be indicated.

### **Article 28 Decision to Grant Design Registration**

An examiner who finds no reason to refuse an application for design registration shall decide to grant the design registration.

## **Article 29 Method of Deciding to Grant or Refuse Design Registration**

- (1) An examiner's decision to grant or refuse design registration must be in writing and must state the reasons for the decision.
- (2) Where an examiner decides to grant or refuse design registration, the Commissioner of the Korean Intellectual Property Office shall transmit a certified copy of the decision to the applicant.

## **Article 29bis Opposition to the Registration of an Unexamined Design**

(1) From the date of the registration of establishment of a design right under an application for unexamined design registration to the expiry of the three-month period after the publication date of an unexamined design registration, any person may file an opposition to the grant of the design right with the Commissioner of the Korean Intellectual Property Office based on the grounds that the registration falls under any of the following subparagraphs; for registration of designs under an application for multiple design registration, an opposition may be filed for each design:

- (i) where the design in the application for design registration violates Articles 5, 6, 7(1), 10 and 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
- (ii) where a person is not entitled to design registration under Article 3(1) or the design in the application for design registration is unregistrable under the proviso of Article 3(1); or
- (iii) where an application for design registration violates a treaty.

(2) A person filing an opposition to an unexamined design registration shall submit an application for an opposition to an unexamined design registration with supporting evidence to the Commissioner of the Korean Intellectual Property Office, stating the following:

- (i) the name and address of the person filing the opposition (and, if a legal entity, the name and address of the business);

- (*ibis*) the name and residential or business address of the agent, if any (and, if a patent legal entity, the name and address of the business and the name of the designated patent attorney);
- (ii) the indication of the registered design(s) subject to the opposition to an unexamined design registration;
- (iii) the purpose of the opposition to an unexamined design registration; and
- (iv) the grounds for the opposition to an unexamined design registration and indication of supporting evidence.

(3) When an opposition to an unexamined design registration is filed, the presiding trial examiner appointed under Article 29*quater*(3) shall transmit a certified copy of the opposition to an unexamined design registration to the owner of the registered design right subject to the opposition and give the owner an opportunity to submit a written reply within a designated period.

(4) Article 68(6) applies *mutatis mutandis* to the filing of an opposition to an unexamined design registration under paragraph (1).

#### **Article 29<sup>ter</sup> Amendment to Grounds for an Opposition to Unexamined Design Registration etc.**

A person filing an opposition to an unexamined design registration may amend the grounds or evidence indicated on the written opposition to an unexamined design registration within thirty days of the date of filing the opposition.

#### **Article 29<sup>quater</sup> Collegial Body for Examinations and Decisions etc.**

(1) A collegial body consisting of three examiners shall examine and decide an opposition to an unexamined design registration.

(2) The Commissioner of the Korean Intellectual Property Office shall designate examiners constituting a collegial body for each opposition to an unexamined design registration.

(3) The Commissioner of the Korean Intellectual Property Office shall appoint one of the examiners designated by paragraph(2) as a presiding examiner.

(4) Articles 144(2), 145(2) and 146(2) and (3) of the Patent Act apply *mutatis mutandis* to the collegial body of examiners and the presiding examiner.

### **Article 29quinquies    Decision on Opposition to Unexamined Designs Registration**

(1) An examiner shall decide on an opposition to an unexamined design registration after the period provided under Articles 29bis(3) and 29ter has elapsed.

(2) Notwithstanding Article 29bis(3), where a person filing an opposition to an unexamined design registration fails to submit the grounds and evidence for the opposition, the presiding trial examiner may reject the opposition by decision after the period provided under Article 29ter has elapsed.

(3) Where an opposition to an unexamined design registration is considered to have merit, the collegial body of examiners shall decide to revoke the registered design (referred to as "a decision to revoke design registration").

(4) Where a decision to revoke design registration becomes final, the design right is deemed never to have existed.

(5) Where an opposition to an unexamined design registration is considered to have no merit, the collegial body of examiners shall decide to maintain the registered design (referred to as "a decision to maintain design registration").

(6) An appeal may not be made against a decision to refuse or maintain design registration in an opposition to an unexamined design registration.

### **Article 30    *Mutatis Mutandis* Application of the Patent Act**

(1) Articles 58, 58bis, 61, 68 and 78 of the Patent Act apply *mutatis mutandis* to examination of applications for design registration.

(2) Articles 72, 73, 75, 76, 78, 141(1) to (3), 142, 148(i) to (v) and (vii), 154(8), 157, 165(3) to (6) and 166 of the Patent Act apply *mutatis mutandis* to an examination or decision on an opposition to an unexamined design registration.

## **CHAPTER IV**

### **REGISTRATION FEES AND REGISTRATION OF DESIGNS**

#### **Article 31 Design Registration Fees**

(1) The owner of a design right or a person seeking to register the establishment of a design right shall pay the design registration fees (referred to as "the registration fees").

(2) Matters related to paying registration fees, including the method and period of payment under paragraph(1), are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

#### **Article 31bis Abandonment for Each Design at the Time of Paying Registration Fees**

(1) A person who receives a decision to grant design registration for an application for multiple design registration may abandon some individual designs when paying the registration fees.

(2) Necessary matters related to the abandonment of a design under paragraph(1) are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 32 Payment of Registration Fees by an Interested Party**

- (1) Regardless of the intent of a person responsible for paying registration fees, any interested party may pay the fees.
- (2) An interested party who has paid the registration fees under paragraph (1) may demand reimbursement of the fees from the responsible party if the party is currently making a profit.

### **Article 33 Late Payment of Registration Fees**

- (1) The owner of a design right or a person seeking to register the establishment of a design right has a period of six months after the expiry of the payment period prescribed under Article 31(2) to pay the registration fees.
- (2) Where registration fees are paid late under paragraph (1), an amount equivalent to twice the registration fees must be paid.
- (3) Where the owner of a design right or a person seeking to register the establishment of a design right fails to pay the registration fees within the extended period prescribed under paragraph (1), the application for design registration is deemed to have been abandoned or the design right concerned is deemed to have been extinguished retroactively from the date on which the initial period for paying the fees expired.

### **Article 33bis Remaining Payment of Registration Fees**

- (1) If the owner of a design right or any person seeking to register a design right fails to pay any portion of the registration fees within the period of late payment under Article 31(2) or 33(1), the Commissioner of the Korean Intellectual Property Office shall order payment of the remaining balance.
- (2) A person who has been ordered to pay the remaining balance in accordance with paragraph (1) may pay the remaining portion of the registration fees within one month of the date of receiving the order.

(3) A person who pays the remaining portion of the registration fees shall pay an amount equivalent to twice the remaining balance if payment of the remaining balance under paragraph (2) falls under either of the following subparagraphs:

- (i) where the remaining portion of the registration fees is paid after the payment period under Article 31(2) expires; or
- (ii) where the remaining portion of the registration fees is paid after the late payment period under Article 33(1) expires.

**Article 33ter Restoration of an Application for Design Registration or a Design Right by Late Payment of Registration Fees etc.**

(1) Where the owner of a design right or a person seeking to register a design right is unable to pay late registration fees within the period of late payment under Article 33(1) for unavoidable reasons, the person has a period of fourteen days from the date on which the reasons cease to exist in which to pay the late registration fees. However, this provision does not apply where six months have elapsed since the expiry of the period for late payment under Article 33(1).

(2) Notwithstanding Article 33(3), where late registration fees are paid in accordance with paragraph (1), the application for the design registration is deemed not to have been abandoned and the design right concerned is deemed to have existed retroactively to the date on which the period for paying the registration fees expired.

(3) The effects of an application for design registration or a design right under paragraph(2) do not extend to the act of working the design or a similar design by another person from the date on which the period for late payment of the registration fees expires to the date on which the registration fees are paid (referred to as "the term of limited effect").

(4) During the term of limited effect, where a person has, in good faith, been commercially or industrially working or preparing to work in the Republic of Korea a design for which an application for design registration has been filed,

or for which a design or similar design is registered under paragraph (2), the person is entitled to have a nonexclusive license for the design right concerned. However, the nonexclusive license must be within the scope of the object of the design or business that the person is working or preparing to work.

(5) A person who has a nonexclusive license under paragraph (4) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

### **Article 34 Official Fees**

(1) A person who files an application for design registration, makes a request or initiates any other procedure shall pay the official fees.

(2) Matters related to paying official fees, including the method and period of payment under paragraph (1), are prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

### **Article 35 Reduction or Exemption of Registration Fees or Official Fees**

(1) Notwithstanding Articles 31 and 34, the Commissioner of the Korean Intellectual Property Office shall grant an exemption from paying registration fees or official fees in the following situations:

- (i) official fees or registration fees for an application for design registration or for a design right belonging to the State; or
- (ii) fees for requesting an invalidation trial by an examiner under Article 60(1).

(2) Notwithstanding Articles 31 and 34, where an application for design registration has been filed by an entitled person under Article 3 of the National Assistance Act, or a person prescribed by ordinance of the Ministry of Commerce, Industry and Energy, the Commissioner of the Korean Intellectual Property Office may reduce or exempt from payment, the

registration fees equivalent to the first three years for the registration of the establishment of a design right and official fees as prescribed by ordinance of the Ministry of Commerce, Industry and Energy.

(3) A person taking advantage of reduced registration fees or exemption from paying registration fees or official fees under paragraph(2) shall submit the documents prescribed by ordinance of the Ministry of Commerce, Industry and Energy to the Commissioner of the Korean Intellectual Property Office.

### **Article 36 Refund of Registration Fees etc.**

(1) In either of the following cases, registration fees and official fees that have been paid may not be refunded unless requested by the person making payment:

- (i) registration fees and official fees paid by mistake; or
- (ii) the amount corresponding to the registration fee for the year following the year in which the decision on revocation or invalidation of the design registration becomes final.

(2) Where a person pays registration fees and official fees incorrectly, the Commissioner of the Korean Intellectual Property Office shall notify the person.

(3) A refund of the registration fees and official fees referred to in paragraph(1)(i) may be requested not later than one year after the payment, and the amount corresponding to the registration fees referred to in paragraph(1)(ii) is not subject to a refund after the date on which the decision to revoke the design registration becomes final.

### **Article 37 Design Register**

(1) The Commissioner of the Korean Intellectual Property Office shall keep a Design Register at the Korean Intellectual Property Office and shall register the following matters:

- (i) the establishment, transfer, extinguishment or restriction on disposal of a design right;
  - (ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of an exclusive or nonexclusive license; and
  - (iii) the establishment, transfer, modification, extinguishment or restriction on disposal of a pledge on a design right or on an exclusive or nonexclusive license.
- (2) The Design Register under paragraph(1) may be stored electronically in whole or in part in format such as an electronic recording medium.
- (3) Relevant matters related to the particulars and procedures of registration not stipulated in paragraphs (1) and (2) are prescribed by Presidential Decree.

### **Article 38 Issuance of a Design Registration Certificate**

- (1) When the establishment of a design right has been registered, the Commissioner of the Korean Intellectual Property Office shall issue a design registration certificate to the owner of the registered design.
- (2) When a design registration certificate does not coincide with the Design Register or other documents, the Commissioner of the Korean Intellectual Property Office shall, upon request or *ex officio*, reissue the design registration certificate with amendments or issue a new design registration certificate.

## **CHAPTER V**

### **DESIGN RIGHT**

#### **Article 39 Registration of Establishment of a Design Right**

- (1) A design right is effective upon the registration of its establishment.
- (2) When registration fees have been paid in accordance with Article 31(1), or when an exemption from paying the fees or a reduction of payment has been granted under Article 35(1) or (2),
- (3) When a right is registered under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall publish the following particulars in the Design Gazette:
- (i) the name and address of the owner of the design right (and, if a legal entity, the title and business address);
  - (ii) the registration number of the design; and
  - (iii) the date of registration of the establishment of the right.

#### **Article 40 The Term of a Design Right**

- (1) The term of a design right is for fifteen years after the registration date of its establishment. However, the expiry date of the term of a design right related to a similar design is the expiry date of the term of the design right related to the principal design.
- (2) Where design registration is bestowed to a lawful holder under Articles 14 or 15, the term of the design right under paragraph(1) starts on the day after the date of registration of the design right previously filed by the unentitled person.

### **Article 41 Effects of a Design Right**

The owner of a design right has the exclusive right to commercially and industrially work the registered design and a similar design. However, where the design right is subject to an exclusive license, this provision does not apply to the extent that the exclusive licensee has the exclusive right to work the registered design or similar design under Article 47(2).

### **Article 42 Design Right Related to a Similar Design**

A person may incorporate a design right related to a similar design as defined in Article 7(1) in a design right related to the principal design.

### **Article 43 Scope of Protection of a Registered Design**

The scope of protection conferred by a registered design is determined by the terms of the description in the application, the design represented in a drawing attached to the application or shown in a photograph or sample attached to the application, and in the explanation of the intent and purpose of the design attached to the drawing.

### **Article 44 Limitations of a Design Right**

The effects of a design right do not extend to any of the following:

- (i) the use of a registered design for research or an experiment;
- (ii) vessels, aircraft or vehicles merely passing through the Republic of Korea or the machinery, instruments, equipment or other accessories used in the vessels, aircraft or vehicles; or
- (iii) identical products existing in the Republic of Korea at the time the application for registration of a design was filed.

### **Article 45 Relationship with another Person's Registered Design**

(1) Where working a registered design would utilize another person's registered design or design similar to the registered design, or patented invention, registered utility model or registered trademark under an application filed before the filing date of the application for the registration of the design concerned, or where a design right conflicts with another person's patent right, utility model right or trademark right under an application filed before the filing date of the application for registration of a design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, unless Article 70 applies.

(2) Where working a design similar to a registered design would utilize another person's registered design or design similar to the registered design, or patented invention, registered utility model or registered trademark under an application filed before the filing date of the application for the registration of the design concerned, or where a design right of the design similar to the registered design conflicts with another person's registered design, patent right, utility model right or trademark right under an application filed before the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the design similar to the registered design commercially or industrially without the consent of the owner of the earlier patent right, utility model right or trademark right, unless Article 70 applies.

(3) Where working a registered design or a design similar to the registered design would utilize or conflict with another person's copyright, effective before the filing date of the application for registration of the design concerned, the owner of the design right or exclusive or nonexclusive licensee may not work the registered design or similar design commercially or industrially without the consent of the owner of the copyright.

### **Article 46 Assignment and Joint Ownership of a Design Right**

(1) A design right may be assigned. However, a design right related to a principal design and a design right related to a similar design must be assigned together.

(2) Where a design right is jointly owned, the owners may not assign or pledge their individual share without the consent of the other owners.

(3) Where a design right is jointly owned, and unless otherwise agreed in a contract of the owners, an owner may individually work the registered design or similar design without the consent of the other owners.

(4) Where a design is jointly owned, an owner may not grant an exclusive license or a nonexclusive license under the design right without the consent of the other owners.

(5) A design right registered as a multiple design may be divided and transferred for each design right.

#### **Article 47 Exclusive License**

(1) The owner of a design right may grant an exclusive license on the design right.

(2) An exclusive licensee granted an exclusive license under paragraph (1) has the exclusive right to commercially and industrially work the registered design or similar design to the extent allowed in the license contract.

(3) An exclusive licensee may not transfer the license without the consent of the owner of the design right, except when the license is transferred with the business in which it is worked or in the case of inheritance or other general succession.

(4) An exclusive licensee may establish a pledge or grant a nonexclusive license on the exclusive license only with the consent of the owner of the design right.

(5) Article 46(2) to (4) applies *mutatis mutandis* to exclusive licenses.

**Article 48 Deleted**

**Article 49 Nonexclusive License**

(1) The owner of a design right may grant a nonexclusive license on the design right.

(2) A nonexclusive licensee is entitled to work the registered design and a design similar to the registered design commercially and industrially to the extent allowed in this Act or by the license contract.

(3) Article 46(2) and (3) of this Act and Article 102(4) to (6) of the Patent Act apply *mutatis mutandis* to a nonexclusive license.

**Article 50 Nonexclusive License by Virtue of Prior Use**

When filing an application for design registration, if a person has created a design that is identical or similar to the design in an existing application, without prior knowledge of the design in the application, or has learned how to create the design from another person and has been working the design commercially or industrially in the Republic of Korea in good faith, or has been making preparations to work the design, the person is entitled to have a nonexclusive license on that registered design or similar design. The license, however, must be limited to the design being worked, or for which preparations for working have been made, and to the purpose of the working or preparations.

**Article 51 Nonexclusive License Due to Working before Registration of Demand for an Invalidation Trial**

(1) Where a person falling within any of the following subparagraphs has, in good faith, been commercially or industrially working a design or a similar design in the Republic of Korea, or has been making preparations to work the design, before the registration of a request for an invalidation trial of the design registration concerned, without knowing that the design registration is subject to invalidation, the person is entitled to have a nonexclusive license on that design right or on the exclusive license existing at the time the design

registration was invalidated, but the nonexclusive license must be limited to the design being worked, or for which preparations for working are being made, and to the purpose of the working or preparations:

- (i) the original owner of the design right, where one of two or more design registrations granted for the same or similar design has been invalidated;
- (ii) the original owner of the design right, where the design registration has been invalidated and design registration for the same or similar design has been granted to an entitled person;
- (iii) in the cases referred to in subparagraphs (i) and (ii), a person who, at the time of registration of the request for an invalidation trial of the design right that has been invalidated, has been granted an exclusive or nonexclusive license or nonexclusive license on the exclusive license and the license has been registered. However, a person falling under Article 118(2) of the Patent Act as applied under Article 61 of this Act is not required to register the license.

(2) A person granted a nonexclusive license under paragraph(1) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee.

## **Article 52 Nonexclusive License after a Design Right Expires etc.**

(1) Where a design similar to a registered design conflicts with a design right registered on or before the date of application for registration of the design (referred to as "a primary design right"), the owner of the primary design right is entitled to have a nonexclusive license for the design right not exceeding the scope of the primary design right when the term of the primary design right expires, or a nonexclusive license for an exclusive license of the design right that exists when the term of the primary design right expires.

(2) Under paragraph (1), an exclusive licensee of a primary design right that exists when the term of the primary right expires, or a nonexclusive licensee under Article 118(1) of the Patent Act, as applied *mutatis mutandis* under

Article 61 of this Act, is entitled to have a nonexclusive license for a design right not exceeding the scope of the primary design right, or a nonexclusive license for the exclusive license of the design right that exists when the term of the primary design right expires.

(3) Paragraphs (1) and (2) apply *mutatis mutandis* where a registered design or a design similar to a registered design conflicts with a patent right or a utility model right registered on or before the date of application for registration of design, and where the term of the patent right or utility model right expires.

(4) The owner of a nonexclusive license paragraph (2) (including when (3) applies *mutatis mutandis*) shall pay reasonable remuneration to the owner of the design right or the exclusive licensee for the design right.

### **Article 53 Abandonment of a Design Right**

The owner of a design right may abandon the design right.

### **Article 54 Restriction on Abandonment of a Design Right etc.**

(1) The owner of a design right may not abandon the design right without the consent of the exclusive licensee, pledgee or nonexclusive licensee under Articles 47(4) or 49(1) of this Act or Article 39(1) of the Patent Act as applied *mutatis mutandis* under Article 24 of this Act.

(2) An exclusive licensee may not abandon the exclusive license without the consent of the pledgee or nonexclusive licensee under Article 47(4).

(3) A nonexclusive licensee may not abandon the nonexclusive license without the consent of the pledgee.

### **Article 55 Effect of Abandonment**

When a design right or an exclusive or nonexclusive license is abandoned, the design right or the exclusive or nonexclusive license on the design right is

extinguished.

### **Article 56 Pledge**

Where a design right or an exclusive or nonexclusive license is the subject of a pledge, the pledgee may not work the registered design except as otherwise provided by contract.

### **Article 57 Subrogation for the Right of a Pledge**

A pledge may be exercised against the remuneration allowed under this Act or against remuneration or goods to be received for working a design right; however, an attachment order must be obtained before the payment or delivery of the remuneration or goods.

### **Article 58 Nonexclusive License when Transferring the Design Right by Exercising the Pledge Right**

Where the owner of a design right has worked a registered design or similar design that is the subject of a pledge before the establishment of the pledge, and the design right is subsequently sold at an auction and so on, the owner is entitled to have a nonexclusive license on the registered design right; however, the owner of the design right shall pay reasonable remuneration to the pledgee.

### **Article 59 Extinguishment of a Design Right in the Absence of a Successor**

A design right is extinguished if no successor exists at the time of succession.

### **Article 60 Report on Working a Registered Design**

The Commissioner of the Korean Intellectual Property Office may require the owner of a design right or the exclusive or nonexclusive licensee to report whether the registered design has been worked, the extent of the working and

so on.

**Article 61 *Mutatis Mutandis* Application of the Patent Act**

Articles 101, 106, 118 and 125*bis* of the Patent Act apply *mutatis mutandis* to design rights.

**CHAPTER VI**

**PROTECTION OF OWNER OF DESIGN RIGHT**

**Article 62 Injunction against an Infringement etc.**

(1) The owner of a design right or the exclusive licensee may request a person who is infringing or is likely to infringe the design right to discontinue or refrain from the infringement.

(2) An owner of a design right or an exclusive licensee who is acting under paragraph(1) may demand the destruction of the articles that resulted from the act of infringement, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

**Article 63 Acts Considered to be Infringing**

Acts of commercially or industrially manufacturing, assigning, leasing, importing or offering for assignment or lease (including displaying for assignment or lease) articles used exclusively for manufacturing articles to which a registered design or similar design has been applied for are shall be considered to infringe the design right or exclusive license.

**Article 64 Presumption etc. of the Amount of Damages**

(1) Where the owner of a design right or exclusive licensee claims compensation from a person who has intentionally or negligently infringed a design right or exclusive license for damages caused by the infringer's transfer of articles, the amount of damages suffered by the owner of the trademark right or exclusive licensee may be calculated as the number of transferred articles multiplied by the profit per unit of the articles that the owner of the trademark right or exclusive licensee might have sold in the absence of the infringement. However, the compensation may not exceed an amount calculated as follows: the estimated profit per unit multiplied by the number of articles that the owner of the trademark right or licensee could have produced subtracted by the number of units actually sold. If the owner of the trademark right or exclusive licensee is unable to sell part or all of the articles for reasons other than the infringement, a sum calculated according to the number of articles subject to the reasons must be deducted.

(2) Where the owner of a design right or exclusive licensee claims compensation for damages from a person who has intentionally or negligently infringed a design right or exclusive license, the profits gained by the infringer as a result of the infringement are presumed to be the amount of damage suffered by the owner of the design right or exclusive licensee.

(3) The owner of a design right or exclusive licensee may claim, as damages for an infringement, the amount of money that the owner or exclusive licensee would normally be entitled to receive for working the registered design from the person who has intentionally or negligently infringed the design right or exclusive license.

(4) Notwithstanding paragraph (3), where the amount of damage exceeds the amount referred to in paragraph (3), the excess amount may also be claimed as compensation for damages. When awarding damages, the court may consider whether the person who infringed the design right or the exclusive license was willful or grossly negligent.

(5) In litigation related to the infringement of a design right or an exclusive license, where the court recognizes that the nature of the facts of the case make it difficult to provide evidence proving the amount of damage that has occurred, notwithstanding paragraphs (1) to (4), the court may determine a reasonable amount based on an examination of the evidence and a review of

all the arguments.

### **Article 65 Presumption of Negligence**

(1) A person who has infringed a design right or exclusive license of another person is presumed to have been negligent regarding the act of infringement. However, this provision does not apply to the infringement of a design right or exclusive license related to a design registered as a secret design under Article 13(1).

(2) Paragraph (1) applies *mutatis mutandis* if the owner of the design right or exclusive or nonexclusive licensee of registration design of unexamined design infringes another person's design right or exclusive license.

### **Article 66 Measures for Recovering the Reputation of the Owner of a Design Right etc.**

Upon the request of the owner of a design right or exclusive licensee, the court may, in lieu of damages or in addition to damages, order the person who has injured the business reputation of the owner of a design right or exclusive licensee by intentionally or negligently infringing the design right or exclusive license, to take necessary measures to restore the business reputation of the owner or exclusive licensee.

### **Article 67 *Mutatis Mutandis* Application of the Patent Act**

Article 132 of the Patent Act applies *mutatis mutandis* to the protection of the owner of a design right.

## **CHAPTER VII**

### **TRIAL**

#### **Article 67bis Trial against a Decision to Reject an Amendment**

Where a person who receives a decision to reject an amendment under Article 18*bis*(1) is dissatisfied with the decision, the person may request a trial within thirty days of receiving a certified copy of the decision.

#### **Article 67ter Trial against a Decision to Refuse or Revoke Design Registration**

A person who has received a decision to refuse or revoke design registration may request a trial within thirty days of receiving a certified copy of the ruling.

#### **Article 68 Trial to Invalidate a Design Registration**

(1) In the following cases, an interested person or an examiner may request a trial to invalidate a design registration; a request may be made for each design for which an application for the registration of multiple designs is made under Article 11*bis*:

- (i) the registration violates Articles 5, 6, 7(1), 10, 16(1) and (2) of this Act or Article 25 of the Patent Act as applied under Article 4 of this Act;
- (ii) where the registration is filed by a person not entitled to a patent or it is unpatentable under the proviso of Article 3(1);
- (iii) the registration violates a treaty; or
- (iv) after registration, the owner of the design right is no longer capable of enjoying the design right under Article 25 of the Patent Act as

applied under Article 4 of this Act, or the registration no longer complies with a treaty.

(2) A trial under paragraph (1) may be requested even after the extinguishment of a design right.

(3) Where a trial decision invalidating a design registration has become final (except for the design registration of a similar design), the design right is deemed never to have existed; however, where the design registration falls under paragraph(1)(iv) and a trial decision invalidating the design registration has become final, the design right is deemed not to have existed from the time the design registration first fell under paragraph (1)(iv).

(4) Where a trial decision invalidating the design registration of a principal design has become final, the design registration of a similar design also becomes invalid.

(5) Where a trial decision invalidating a design registration of a similar design has become final or where the design registration of a similar design becomes invalid under paragraph (4), the design right of the similar design is deemed not to have existed from the beginning. However, where a trial decision invalidating the design registration of a similar design under paragraph(1)(iv) has become final, the design right of the similar design is deemed not to have existed from the time the design registration of the similar design first fell under paragraph (1)(iv).

(6) Where a trial for invalidation under paragraph(1) has been requested, the presiding trial examiner shall notify the exclusive licensee of the design right and any other persons who have registered rights related to the design registration.

### **Article 69 Trial to Confirm the Scope of a Design Right**

The owner of a design right or an interested person may request a trial to confirm the scope of a design right protected by the design registration.

## **Article 70 Trial for Granting a Nonexclusive License**

(1) Where the owner of a design right or exclusive or nonexclusive licensee seeks permission to exercise the right under Article 45(1) or (2) and the other party refuses permission without justifiable reasons or permission is impossible to obtain, the owner or exclusive or nonexclusive licensee may request a trial for the grant of a nonexclusive license to the extent necessary to work the registered design.

(2) Where a person who has granted a nonexclusive license under paragraph (1) seeks to work the registered design of the person who has been granted the nonexclusive license and the latter refuses permission or permission is impossible to obtain, the former may request a trial for the grant of a nonexclusive license for the registered design or within the scope of a design similar to the registered design.

(3) A nonexclusive licensee granted a nonexclusive license under paragraphs (1) or (2) shall remunerate the patentee, the owner of the utility model right, the owner of the design right or the exclusive licensee; if payment is not possible for unavoidable reasons, the remuneration must be deposited.

(4) A nonexclusive licensee under paragraph (3) may not work a patented invention, registered utility model or design right or similar design without paying or depositing the remuneration.

## **Article 71 *Mutatis Mutandis* Application of the Provisions of Examination to Trial against the Decision to Refuse Design Registration**

(1) The main stipulation of Articles 18(1), 18*bis*, 27 and 28 applies *mutatis mutandis* to a trial against the decision to refuse design registration. In such cases, "before transmittal of the examiner's first decision to either grant or refuse design registration under Article 28 (referred to as 'decision to grant or refuse design registration')" in Article 18(1) reads "within the designated period for submitting arguments by notification of reasons for refusal", "where an applicant has requested a trial under Article 67*bis*" in Article 18*bis*(3) reads "where an action has been brought under Article 186(1) of the Patent Act

applying *mutatis mutandis* under Article 75 of this Act", and "until the trial decision has become final" reads "until the ruling has become final".

(2) Article 18*bis*(1), (4) and 27 that apply *mutatis mutandis* under paragraph(1) apply only where the reasons for refusal differ from the grounds of the examiner's original decision to refuse design registration.

### **Article 72 *Mutatis Mutandis* Application of the Patent Act**

Articles 139 to 166 and 171 to 176 of the Patent Act apply *mutatis mutandis* to trials concerning designs. In such cases, "A person who requests a trial against a decision to refuse or revoke a patent under Article 132*ter*" in Article 140*bis*(1), excluding the subparagraphs, reads "a person who requests a trial under Article 67*bis* or 67*ter*", "date of decision" in Article 140*bis*(1)(iv) reads "date of decision to refuse design registration, date of decision to revoke design registration, or date of decision to reject an amendment", "the costs of a trial under Article 132*ter* and 136 or 138" in Article 165(3) of the Patent Act reads "the costs of the trial under Article 67*bis*, 67*ter* or 70", "a decision of refusal to grant a patent, a decision of refusal to extend the term of a registered patent or a trial against a decision to revoke a patent" in Article 171(2) of the Patent Act reads "a trial under Articles 67*bis* or 67*ter*", "Article 51" in Article 174(1) of the Patent Act reads "Article 18*bis*", "Article 47(1)(i) and (ii)" in Article 174(2) of the Patent Act reads "Article 18(1)", "Article 132*ter*" in Article 176(1) of the Patent Act reads "Articles 67*bis* or 67*ter*", and "a decision of refusal to grant a patent, a decision of refusal to extend the term of a registered patent or a decision to revoke a patent" in Article 176(1) of the Patent Act reads "a decision to reject an amendment, refuse design registration or revoke design registration".

## CHAPTER VIII

### RETRIAL AND LITIGATION

#### Article 73 Request for a Retrial

- (1) Any party may request a retrial against a trial decision that has become final.
- (2) Articles 451 and 453 of the Civil Procedure Act apply *mutatis mutandis* to a request for a retrial under paragraph (1).

#### Article 74 Restriction on Effects of Design Rights Restored by a Retrial

(1) The effects of a design right related to an invalidated design registration that has been restored through a retrial do not extend to any product that was, in good faith, imported into or manufactured or acquired in the Republic of Korea after the trial decision became final but before a request for a retrial has been registered if the design right falls under any of the following subparagraphs:

- (i) where a design right (including a design right that has been finally revoked in a trial against a decision to revoke design registration) has been invalidated but restored by a retrial;
- (ii) where a trial decision ruling that a product is outside the scope of a design right became final but a decision to the contrary at a retrial has become final; or
- (iii) where the establishment of a design right for an application for design registration previously rejected by a trial decision has been registered through a retrial.

(2) Where a design right falls under paragraph (1), the effects of the design right do not extend to the following acts:

- (i) working a design in good faith after a trial decision becomes final but before the registration of a request for a retrial;
- (ii) manufacturing, assigning, leasing, importing, or offering for assignment or lease products for which an application for design registration has been made, after a trial decision becomes final but before the registration of a request for a retrial.

### **Article 75 *Mutatis Mutandis* Application of the Patent Act**

Articles 179, 180 and 182 to 185 of the Patent Act apply *mutatis mutandis* to a retrial for a design, and Articles 186 to 191 of the Patent Act apply *mutatis mutandis* to litigation for a design. In such cases, "action against a trial decision" in Article 186(1) of the Patent Act reads "action against a trial decision and a decision to reject an amendment under Article 18*bis*(1) as applied under Article 71(1) of this Act (including Article 184 of the Patent Act as applied under Article 75 of this Act)", and "action under Article 186(1)" in Article 188(1) of the Patent Act reads "action against a trial decision and a decision to reject an amendment under Article 18*bis*(1) as applied *mutatis mutandis* under Article 71(1) (including Article 184 of the Patent Act as applied *mutatis mutandis* under Article 75)".

## **CHAPTER IX**

### **SUPPLEMENTARY PROVISIONS**

#### **Article 76 Inspection of Documents**

(1) A person may request the Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal for a certified copy of an application for design registration or a trial certificate, a certified copy or extract of documents, or to inspect or copy of the Design Register or other documents.

(2) The Commissioner of the Korean Intellectual Property Office or the President of the Intellectual Property Tribunal may not grant the request under paragraph (1) if the required document is related to an application that has not been published, that has not led to the registration of a design right or is liable to contravene public order or morality.

#### **Article 77 Prohibition of Opening or Removing a Design Register and Documents Related to an Application, Examination or Trial**

(1) Removal of the Design Register or documents related to an application for design registration, examination, opposition to the registration of an unexamined design, trial or retrial is prohibited. However, under Article 58(1) or (2) of the Patent Act as applied under Article 30 of this Act, this provision does not apply to the removal of documents related to an application for design registration or examination.

(2) A response may not be given to a request for an expert opinion, testimony or an inquiry regarding the contents of a pending application for design registration, examination, opposition to the registration of an unexamined design, trial or retrial or the contents of a decision or ruling.

#### **Article 78 Design Gazette**

(1) The Korean Intellectual Property Office shall publish the Design Gazette. However, a registered design that is required to be kept secret for national defense under Article 41 of the Patent Act as applied under Article 24 of this Act may not be published in the Design Gazette.

(2) The Design Gazette may be published in electronic media as prescribed by ordinance of the Ministry of the Commerce, Industry and Energy.

(3) When the Design Gazette is published in electronic media, the Commissioner of the Korean Intellectual Property Office shall publicize on a communication network matters regarding the Design Gazette's publication, main contents and service.

(4) Matters to be published in the Design Gazette are prescribed by Presidential Decree.

### **Article 79 Design Registration Marking**

The owner of a design right or an exclusive or nonexclusive licensee may mark an identification of the registered design on a product for which a registered design has been applied for or on the product's container or package.

### **Article 80 Prohibition of False Marking**

The following acts are unlawful:

- (i) marking on a product for which design registration has not been granted or for which an application for design registration is not pending, or on the product's container or package, an indication that design registration has been granted or that an application for design registration has been filed or any sign likely to cause confusion over the registration;
- (ii) assigning, leasing or displaying a product that has been marked as referred to in subparagraph (i);
- (iii) marking an indication that a product is subject to a registered design or an application for design registration, or any confusingly similar indication on advertisements, signboards or tags to cause others to manufacture, use or lease the product for which design registration has not been granted or a design application is not pending.

### **Article 81 *Mutatis Mutandis* Application of the Patent Act**

Articles 217*bis* to 220, 222 and 224*bis* of the Patent Act apply *mutatis mutandis* to designs.

## **CHAPTER X**

### **PENAL PROVISIONS**

#### **Article 82 Offense of Infringement**

(1) A person who infringes a design right or an exclusive license is liable to imprisonment with labor not exceeding seven years or to a fine not exceeding 100 million won.

(2) Prosecution for offenses under paragraph (1) is initiated when an injured party files a complaint.

#### **Article 83 Offense of Perjury**

(1) Having taken an oath under the law, a witness, expert witness or interpreter who makes a false statement or gives a false expert opinion or interprets falsely before the Intellectual Property Tribunal is liable to imprisonment with labor not exceeding five years or to a fine not exceeding 10 million won.

(2) Having committed an offense under paragraph (1), a person who admits the offense before the examiner's decision or decision on opposition to registration of an unexamined design is made or before a trial decision on the case becomes final may be partially or completely exempted from the penalty.

#### **Article 84 Offense of False Marking**

A person who violates Article 80 is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

#### **Article 85 Offense of Fraud**

A person who fraudulently or unjustly obtains a design registration or a trial

decision is liable to imprisonment with labor not exceeding three years or to a fine not exceeding 20 million won.

### **Article 86 Offense of Divulging Secrets**

Any present or former officials of the Korean Intellectual Property Office or the Intellectual Property Tribunal who have divulged or appropriated secrets related to a design contained in a design application, or a design requested to be kept secret under Article 13(1), to which they had access during the course of their duties are liable to imprisonment with labor not exceeding two years or to a fine not exceeding 3 million won.

### **Article 87 Dual Liability**

Where a representative of a legal entity or an agent, employee or any other servant of a legal entity or natural person has violates Articles 82(1), 84 or 85 with regard to the business of the legal entity or natural person, in addition to the offender, the legal entity is liable to a fine as prescribed in either of the following subparagraphs, and the natural person is liable to a fine as prescribed in the relevant Article:

- (i) under Article 82(1), a fine not exceeding 300 million won; or
- (ii) under Articles 84 or 85, a fine not exceeding 60 million won.

### **Article 88 Administrative Fine**

(1) A person who commits any of the following acts is liable to an administrative fine not exceeding 500,000 won:

- (i) making a false statement before the Intellectual Property Tribunal after having taken an oath under Articles 299(2) and 367 of the Civil Procedure Act;

- (ii) failing to comply, without justifiable reasons, with an order of the Intellectual Property Tribunal to submit or show documents or other materials related to taking or preserving evidence;
  - (iii) failing to comply, without justifiable reasons, with an order to report under Article 60 on matters related to working a registered design; or
  - (iv) failing to comply, without justifiable reasons, with a subpoena of the Intellectual Property Tribunal to appear as a witness, expert witness or interpreter, or refusing to take an oath, make a statement, testify, give an expert opinion or interpret.
- (2) The Commissioner of the Korean Intellectual Property Office shall impose and collect the administrative fine referred to in paragraph(1) as prescribed by Presidential Decree.
- (3) A person who objects to the imposition of an administrative fine under paragraph(2) may protest to the Commissioner of the Korean Intellectual Property Office within thirty days of being notified of the imposition.
- (4) Upon receipt of a protest under paragraph (3), the Commissioner of the Korean Intellectual Property Office shall immediately notify the competent court, which shall adjudicate the case of the administrative fine according to the Noncontentious Case Litigation Procedure Act.
- (5) Where no opposition has been raised within the period prescribed in paragraph(3) and where the fine has not been paid, the Commissioner of the Korean Intellectual Property Office shall collect the fine in accordance with the rules of collecting national taxes in arrears through the head of the competent tax office.

## **Article 89   *Mutatis Mutandis* Application of the Patent Act**

Article 229*bis* 231 of the Patent Act applies *mutatis mutandis* to penal provisions related to designs.

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on September 1, 1990.

### **Article 2 General Transitional Measures**

Except as otherwise prescribed by Articles 3 to 7 of this addendum, this Act applies to matters that take place before this Act enters into force. However, this Act has no influence on any effect produced under the previous provisions.

### **Article 3 Transitional Measures on Applications etc.**

An appeal against the examination of an application for design registration and a ruling of rejection made before this Act enters into force is subject to the previous provisions.

### **Article 4 Transitional Measures on Trials Related to Registering the Establishment of a Design Right**

Any trial, appeal, retrial and lawsuit on a registered design whose right is established on the basis of an application for design registration filed before this Act enters into force is subject to the previous provisions.

### **Article 5 Transitional Measures on the Dismissal of an Amendment**

An amendment made before this Act enters into force is subject to the previous provisions.

**Article 6 Transitional Measures on Expropriation of a Design Right etc.**

Any disposition or lawsuit pertaining to a restriction, expropriation, revocation or the working of a design right requested before this Act enters into force is subject to the previous provisions.

**Article 7 Transitional Measures on the Procedure and Expenses of Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

**ADDENDUM**

**Article 1 Date of Entry into Force**

This Act enters into force on the date of its promulgation. (Proviso deleted.)

**Articles 2 to 5 Deleted**

**ADDENDUM**

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1994.

**Article 2 Transitional Measures on the Term of a Design Right**

Notwithstanding amended Article 40(1), the previous provisions govern the term of a design right that has been established or for which establishment

has been sought by an application for design registration before this Act enters into force.

### **Article 3 Transitional Measures on the Period for Refunding Design Registration Fees etc.**

The previous provisions govern the refund of design registration fees and other fees mistakenly paid before this Act enters into force.

### **Article 4 Application Examples on Returning Design Registration Fees**

Amended Article 36(1)(ii), which concerns the return of design registration fees due to the final decision of a trial on the invalidation of a design registration, applies to final decisions of invalidation made after this Act enters into force.

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

### **Article 2 Transitional Measures on Pending Cases**

(1) Any case in which a request has been made before this Act enters into force for a trial or an appeal against a ruling of refusal or against a decision to dismiss a correction is deemed to be continued with the Intellectual Property Tribunal under this Act and to be pending at the Intellectual Property Tribunal.

(2) Any case in which a request has been made before this Act enters into force for an appeal against the decision of a trial or for immediate appeal

against a decision to dismiss the request is deemed to be continued with the Patent Court under this Act and to be pending at the Patent Court.

### **Article 3 Transitional Measures on Cases that May Be Appealed**

(1) A court action may be brought against a case on which a decision on a trial, a decision to dismiss a request for a trial, a ruling of rejection or a decision to dismiss an amendment by an examiner when this Act enters into force, and against which an appeal has not been brought to the Patent Tribunal under the previous provisions within 30 days of the enforcement date of this Act, and a court action referred to in Article 186(1) of the Patent Act applied *mutatis mutandis* under Article 75 of this Act may be brought against a decision on the trial and a decision to dismiss a request for a trial, and a trial referred to in Article 132<sup>ter</sup> or 132<sup>quater</sup> of the Patent Act applied *mutatis mutandis* under Article 72 of this Act may be requested against a ruling of rejection or a decision to dismiss an amendment by the examiner. However, this provision does not apply if any period for appeal has expired under the previous provisions when this Act enters into force.

(2) An appeal may be brought within 30 days of the enforcement date of this Act against a case on which a decision or appeal, a decision to dismiss a request for an appeal and a decision to dismiss an amendment by the appellate trial examiner has been served with the Supreme Court when this Act enters into force. However, this provision does not apply if any period for appeal has expired under the previous provisions when this Act enters into force.

(3) Any case against which an appeal has been brought to the Supreme Court and which is pending at the Supreme Court before this Act enters into force, and any case against which an appeal has been brought under paragraph (2), is deemed to be pending or to be brought against the Supreme Court by this Act.

### **Article 4 Transitional Measures on Retrials**

Articles 2 and 3 of this addendum apply *mutatis mutandis* to a pending retrial.

## **Article 5 Transfer etc. of Documents**

(1) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(1) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the President of the Intellectual Property Tribunal.

(2) The Commissioner of the Korean Intellectual Property Office shall immediately transfer the documents of a pending case referred to in Article 2(2) of this addendum (including those applied *mutatis mutandis* under Article 4 of this addendum) to the chief of the Patent Court. In this case, matters necessary for the transfer and so on of documents are prescribed by Supreme Court regulations.

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1996.

### **Article 2 Transitional Measures on the Procedures and Expenses for Trials and Compensation for Damages etc.**

The previous provisions govern the procedure, expenses, compensation for damages and so on for a trial, appeal, retrial and lawsuit requested against any act committed before this Act enters into force.

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 1997. (Proviso deleted.)

**Articles 2 to 5 Deleted**

**ADDENDUM**

**Article 1 Date of Entry into Force**

This Act enters into force on March 1, 1998.

**Article 2 Transitional Measures on Applications for Registration etc.**

The previous provisions govern an examination or ruling to reject an application for design registration made before this Act enters into force.

**Article 3 Transitional Measures on Trials Related to Registered Designs**

The previous provisions govern trials, retrials and court actions for registered designs on which rights are established in accordance with applications for design registration filed before this Act enters into force.

**Article 4 Transitional Measures on the Dismissal of Amendments**

The previous provisions do not apply to amendments before this Act enters into force.

**Article 5 Application Examples of Admission of Exceptions to Loss of Novelty**

Amended Article 8(1) and (2) is effective for an application for design registration initiated after this Act enters into force.

**Article 6 Application Examples of Extending the Term of a Design Right**

Amended Article 40(1) is effective for a design right registered by an application for design registration initiated after this Act enters into force.

**Article 7 Application Examples Related to Another Person's Design Right etc.**

Amended Article 45(2) applies to the owner or exclusive licensee of a design right registered by an original application for design registration submitted after this Act enters into force.

**ADDENDUM**

**Article 1 Date of Entry into Force**

This Act enters into force on January 1, 1999. However, [deleted] amended Articles 21 and 22 enter into force on July 1, 1999.

**Articles 2 to 5 Deleted**

**ADDENDUM**

**Article 1 Date of Entry into Force**

This Act enters into force on October 1, 2000. (Proviso deleted.)

**Articles 2 to 13 Deleted**

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2001. However, amended Article 36(2) and (3) enters into force on the date of its promulgation.

### **Article 2 General Transitional Measures**

The previous provisions apply to the requirements for registration, division, conversion, examination, design registration, a design right, an opposition to an unexamined design registration, a trial, retrial or litigation related to an application for design registration submitted when this Act enters into force, except under any of the following circumstances:

- (i) amended Article 31*bis* applies if each design in an application for multiple design registration is abandoned;
- (ii) amended Article 33*bis* applies if an application for design registration or design right is deemed to have existed retroactively by late payment of the registration fees; and
- (iii) Article 140*bis*(1) and (3) of the Patent Act as applied *mutatis mutandis* under amended Article 72 applies if a trial against a ruling to reject a design registration is requested.

## **ADDENDUM**

### **Article 1 Date of Entry into Force**

This Act enters into force on July 1, 2002.

**Articles 2 to 7 Deleted**

**ADDENDUM**

**Article 1 Date of Entry into Force**

This Act enters into force five months after its promulgation.

**Article 2 Application of the Treatment of Oppositions Against  
Unexamined Design Registration**

Amended Article 30(2) applies to an opposition against an unexamined design registration initiated after the enforcement of this Act.